



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive Report Regarding League of California Cities Communications Pertaining to Senate Bill **474**

MEETING DATE: June **1** 2011

PREPARED BY: City Clerk

RECOMMENDED ACTION: Receive report regarding League of California Cities (League) communications pertaining to Senate Bill **474**.

BACKGROUND INFORMATION: The City received a request for communication from the League on May **16, 2011** pertaining to **SB 474**. A letter of opposition to SB **474**, signed by the Mayor, was needed immediately as the bill was being heard in the State Legislature that week.

As you may be aware, SB **474** (Evans) would provide, for certain construction contracts, that provisions in a contract purporting to indemnify, hold harmless, or defend another person against actual or claimed liability or damage, from the negligence, willful misconduct, defective design, violation of law, or other fault of that person or that person's agents, employees, independent contractors, subcontractors, or representatives is against public policy and is void and unenforceable. These provisions are standard in various municipal contracts. In addition, the bill would require that California law be applied to these contracts regardless of any choice-of-law rules and would provide that waiver of these provisions is contrary to public policy, void, and unenforceable. For these reasons, the League is adamantly opposing the bill.

The letter was sent as requested on May **18, 2011** and this report is provided for informational purposes only.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable.

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Randi Johl
City Clerk

APPROVED:

A handwritten signature in black ink, appearing to read "Konradt Bartlam", written over a horizontal line.

Konradt Bartlam, City Manager

CITY COUNCIL

BOB JOHNSON, Mayor
JOANNE MOUNCE,
Mayor Pro Tempore
LARRY D. HANSEN
PHIL KATZAKIAN
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KONRADT BARTLAM,
City Manager
RANDI JOHL, City Clerk
D. STEPHEN SCHWABAUER
City Attorney

May 18, 2011

Senator Tom Berryhill
California State Senate
State Capitol Building, Room 3076
Sacramento, California 95814
Via Facsimile: (916) 327-3523

SUBJECT: SB 474 (Evans). Commercial Construction Contracts: Indemnity
(As Amended May 2, 2011) – Notice of Opposition

Dear Senator Berryhill:

The City of Lodi opposes the current version of Senate Bill (SB) 474, which would prohibit indemnification provisions in contracts between cities and contractors. This will limit a city's ability to negotiate contract terms and ultimately result in increased costs to the public. We understand that Senator Evans has committed to amending SB 474 so that it does not impact the public agencies. We encourage you to vote no on the bill if it is taken up on the Senate floor before such amendments are made.

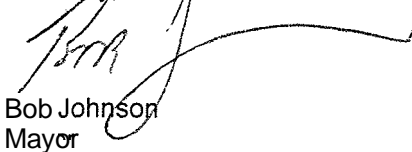
California public agencies face substantial challenges in the efforts to maintain and expand infrastructure. In order to develop infrastructure projects, public agencies enter into written contracts that establish the scope of the project and allocate the risks associated with the particular project through some type of indemnity or "hold harmless" provision.

The nature, scope and magnitude of risks are unique to each project. The parties who are in the optimal position to fairly allocate the unique risks of a particular infrastructure project are the public agency and the contractors with which it negotiates. These parties know the site conditions, project specifics, schedule, and capabilities and capacities of each party to effectively manage the project.

SB 474, as currently written, would be detrimental to the City of Lodi because in the typical lawsuit, it will result in refusal by the contractor or its insurance carrier to provide a legal defense for the public agency prior to a full trial. The net effect would be to shift to taxpayers legal defense costs that should be borne to varying degrees by contractors and their insurance carriers. The negotiation of terms between public agencies and contractors should be left to the free-play of market forces. SB 474 would preclude negotiation of broader protection, even where the public agency is willing to pay extra for such protection.

For these reasons, the City of Lodi opposes SB 474.

Sincerely,



Bob Johnson
Mayor

C: Senator Noreen Evans (916-323-6958)
Tara Welch, Consultant, Senate Judiciary Committee (916-445-8390)
Jennifer Whiting, Legislative Representative, League of California Cities (916-658-8240)